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2 RONALD TYLER  
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5  
6 Counsel for Defendant SALCEDO MENDOZA  
7

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10

11 UNITED STATES OF AMERICA,	)	No. CR 08-0399 PJH
	)	
12 Plaintiff,	)	DECLARATION OF RONALD TYLER
	)	AUTHENTICATING DOCUMENTS
13 v.	)	
	)	Pretrial Conference: August 27, 2008
14 JAIME SALCEDO MENDOZA	)	
	)	
15 Defendant.	)	
	)	

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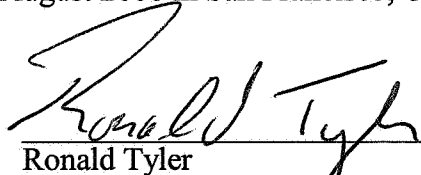
16  
17 I, Ronald Tyler, state as follows:

- 18 1. I am the attorney of record for Jaime Salcedo Mendoza.
- 19 2. I submit this declaration to authenticate documents that I received in discovery, as well as  
20 for the Court's convenience, so all supporting documentation is submitted together in a  
21 single document.
- 22 3. Attached hereto as Exhibit A is a true and correct copy of a letter received on July 24,  
23 2008 from Assistant United States Attorney Tarek Helou.
- 24 4. Attached hereto as Exhibit B is a true and correct copy of Excerpts of the Defendant's  
25 May 6, 2003 Sentencing Memorandum, provided in discovery.
- 26 5. Attached hereto as Exhibit C is a true and correct copy of Excerpts of the Government's

1 May 9, 2003 Opposition, provided in discovery.

2 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
3 knowledge.

4 Signed and dated on the 11<sup>th</sup> day of August 2008 in San Francisco, California.

5   
6 Ronald Tyler  
7 Assistant Federal Public Defender

# Exhibit A



**U.S. Department of Justice**

*United States Attorney  
Northern District of California*

11th Floor, Federal Building  
450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495

(415) 436-7200

FAX: (415) 436-7234

July 24, 2008

BY HAND-DELIVERY

Ronald Tyler  
Assistant Federal Public Defender  
450 Golden Gate Avenue, 19th Floor  
San Francisco, California 94102

**Received**

**JUL 24 2008**

Federal Public Defender  
San Francisco

Re: United States v. Jaime Salcedo-Mendoza  
Case No. CR-08-399 PJH

Dear Mr. Tyler:

Pursuant to your June 10, 2008 request for discovery, enclosed are copies of the following:

- (1) A copy of pretrial criminal minutes from the defendant's February 21, 2003 change of plea in his previous § 1326 case, *United States v. Jaime Salcedo-Mendoza*, Case No. CR 02-40135 SBA. (Bates No. USA-326);
- (2) A copy of the defendant's February 21, 2003 Application for Permission to Enter Plea of Guilty and Order Accepting Plea in his previous § 1326 case, *United States v. Jaime Salcedo-Mendoza*, Case No. CR 02-40135 SBA. (Bates No. US0327 – USA-334);
- (3) A copy of the defendant's February 21, 2003 Plea Agreement in his previous § 1326 case, *United States v. Jaime Salcedo-Mendoza*, Case No. CR 02-40135 SBA. (Bates No. US0335 – USA-340);
- (4) A copy of the defendant's May 6, 2003 Sentencing Memorandum and Motion for Downward Departure in his previous § 1326 case, *United States v. Jaime Salcedo-Mendoza*, Case No. CR 02-40135 SBA. (Bates No. US0341 – USA-348); and
- (5) A copy of the United States' May 9, Opposition to the Defendant's Motion for Downward Departure in the defendant's previous § 1326 case, *United States v. Jaime Salcedo-Mendoza*, Case No. CR 02-40135 SBA. (Bates No. US0349 – USA-353).

The government will make available for your inspection any item of evidence referred to in the enclosed reports and documents, as well as any other evidence seized from your client and/or which the government intends to offer in its case-in-chief. Please contact me to arrange a mutually convenient time for your inspection of such items.

The enclosed materials and any future discovery provided to you which may exceed the scope of discovery mandated by the Federal Rules of Criminal Procedure, federal statute or relevant case law is provided voluntarily and solely as a matter of discretion. By producing such materials to you, the government does not waive its right to object to any future discovery requests beyond the ambit of its legal obligations. We explicitly reject any suggestion that the criminal local rules, including Criminal Local Rule 16-1(c), serve as valid authority for any substantive discovery obligations beyond that required under the applicable federal statutes and rules (e.g., Rule 16 and Jencks).

Notice Re: FRE 404(b), 608, 609

The government also hereby gives notice that it may seek to introduce the other crimes, wrongs or acts committed by defendant which are referenced in the enclosed documents pursuant to Rules 404(b), 608 and/or 609 of the Federal Rules of Evidence.

Request for Reciprocal Discovery

With this letter the government requests all reciprocal discovery to which it is entitled under Federal Rules of Criminal Procedure 16(b) and (c) and 26.2, including, but not limited to, the following:

1. Inspection and/or copies of all books, papers, documents, photographs, tangible objects, or portions thereof in the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in his case-in-chief at trial.
2. Inspection and/or copies of the results of any reports of physical or mental examinations and of scientific tests or experiments made in connection with the above-entitled case within the possession or control of the defendant which the defendant intends to introduce as evidence in his case-in-chief at trial or which have been prepared by a witness whom the defendant intends to call at trial.
3. Inspection and/or copies of all statements made by all witnesses whom the defendant intends to call at trial.

Request for Notice of Defenses

The Government also requests notice of any intention of your client to rely on an entrapment defense or a defense involving mental condition or duress, and/or an alibi defense.

Plea Negotiations

I would also like to take this opportunity to state the United States Attorney's position regarding plea negotiations, if any, in this matter. I do not have the authority to make any binding plea offer in this matter. If you wish to discuss a disposition of this matter, please be advised that all discussions are about a tentative disposition only and will not be final unless and until the final disposition is approved by the United States Attorney or an appropriate designee. Please do not assume that I have received such approval based on discussions between us or the exchange of draft plea agreements. I will advise you in writing if and when our plea negotiations have resulted in a plea agreement approved by the United States Attorney or an appropriate designee.

Please contact me if you have any questions concerning the foregoing.

Very truly yours,

JOSEPH P. RUSSONIELLO  
United States Attorney

A handwritten signature in dark ink, appearing to read "Tarek J. Helou", is written over a horizontal line.

TAREK J. HELOU  
Assistant United States Attorney

Encl: USA-325 – USA-353

# Exhibit B

1 TODD L. BEQUETTE (No. 160389)  
2 39275 State Street  
3 Fremont, CA 94538  
4 (510) 742-9292

5 Attorney for Defendant  
6 JAIME SALCEDO MENDOZA

FILED

2003 MAY -6 AM 9:10

RICHARD V. JACKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,

40135  
No. CR 02-4013335-SBA

10 Plaintiff,

11 v.

DEFENDANT'S SENTENCING  
MEMORANDUM AND MOTION FOR  
DOWNWARD DEPARTURE

12  
13 JAIME SALCEDO MENDOZA

14 Defendant.

15  
16 INTRODUCTION

17 Defendant Jaime Salcedo-Mendoza was named in a one-count Indictment filed on July 11, 2002,  
18 charging him with unlawful reentry into the United States following deportation. On February 21, 2003,  
19 Mr. Salcedo-Mendoza entered a plea of guilty to that charge. Sentencing is scheduled for May 13, 2003  
20 at 9:00 a.m.

21 Mr. Salcedo Mendoza received the Presentence Report prepared by the United States Probation  
22 Officer Karey Knowles. The Report finds that Mr. Salcedo-Mendoza's criminal history category is IV  
23 and the Total Offense Level is 13. The resulting Sentencing Guideline Range is 24 to 30 months. The  
24 Probation Office recommends the low-end sentence of 24 months. Mr. Salcedo-Mendoza has no  
25 objection to the facts stated in the Presentence Report or the Guideline calculation it contains.

26 Mr. Salcedo-Mendoza respectfully requests that the Court downward depart from the Sentencing  
27  
28



1 Guidelines based on the Guidelines' overstatement of his criminal history, his stipulation to deportation,  
2 and the mitigating cause for his return to the United States.

3  
4 **STATEMENT OF FACTS<sup>1</sup>**

5 Defendant Jaime Salcedo-Mendoza was born on December 18, 1977, in Tijuana, Mexico. He  
6 was the only child born to Jesus Barabiz and Ramona Mendoza-Sanchez. Defendant's father was an  
7 alcoholic and physically abusive. When Jaime was very young, his mother moved to the city to find  
8 work, and left him to be raised by his grandmother. His grandmother imposed a punitive approach to  
9 child care which included beating him with sticks and making Jaime hold rocks while kneeling on the  
10 hard floor.

11  
12 While still in Mexico in 1992, Mr. Salcedo-Mendoza became addicted to both drugs and  
13 alcohol. He moved to the United States in 1992, and met Dora Silva, with whom he would eventually  
14 have a child, Louis Enrique, who is now five years old. Throughout the 1990's, the defendant suffered  
15 several drug-related convictions, which are documented in the Presentence Report. While battling his  
16 drug addiction, for which he is yet to receive treatment, defendant made it a point to work hard to  
17 support his wife and child. He is proud of the fact that during virtually all of his time spent in the United  
18 States, he remained gainfully employed.

19  
20  
21 Mr. Salcedo-Mendoza committed the present offense in April of 2003, re-entering the country  
22 to once again seek employment and be re-united with his family. After re-entering the country, he was  
23 prosecuted for a drug related felony (Accessory), before being transferred to federal custody.

24 Ultimately, his drug addiction cost him his family. He recently separated from his wife, and is  
25

26  
27 <sup>1</sup>All of the facts herein are taken from the Presentence Report.

1 resigned to the fact that he will never see his son again.

2  
3  
4 **ARGUMENT**

5 **I. MR. SALCEDO-MENDOZA IS ENTITLED TO A DOWNWARD DEPARTURE**  
6 **BASED ON THE EXTRAORDINARY CIRCUMSTANCES OF THIS CASE**

7 **A. Mr. Salcedo-Mendoza's Criminal History Category Calculation Overstates**  
8 **The Likelihood of Recidivism and Future Criminal Behavior**

9 The Sentencing Guidelines provide that "there may be cases where the court concludes that a  
10 defendant's criminal history category significantly over-represents the seriousness of a defendant's  
11 criminal history or the likelihood that a defendant will commit further crimes." USSG section 4A1.3  
12 (e) p.s. In such cases, the court may downward depart.

13 Mr. Salcedo-Mendoza's criminal history calculation is an oddity that makes this such a case.  
14 Pursuant to USSG section 4A1.1(d), two points are to added to defendant's criminal history computation  
15 if the defendant committed the instant offense while under any criminal justice sentence, including  
16 probation, parole, supervised release, imprisonment, work release, or escape status. As the presentence  
17 report points out, defendant was sentenced to three years probation on May 6, 2002, having been  
18 convicted of a felony drug-related case in Alameda County. However, since defendant had already  
19 committed the present offense (by re-entering the United States) before being placed on probation for  
20 this felony offense, this two-point addition to Mr. Salcedo-Mendoza's criminal history calculation is  
21 inappropriate with regard to this grant of felony probation..

22  
23  
24 Technically, of course, the two-point calculation does, in fact, apply to Mr. Salcedo-Mendoza  
25 because he was placed probation for three years in Alameda County on October 28, 2001. That  
26 probation is due to expire in October of 2004, and therefore the defendant did commit the instant offense  
27

1 of re-entry while on that probation. However, the application of the 2002 probation in the Presentence  
2 Report (as opposed to the application of the 2001 probation) results in an overstatement of defendant's  
3 criminal history. Whereas the Presentence Report would have the Court impose two points based on  
4 a grant of felony probation, the probation that is technically applicable was imposed after defendant  
5 admitted a misdemeanor violations for Battery on a Peace Officer and Resisting Arrest. Thus, while  
6 technically applicable, the two-point addition to Mr. Salcedo-Mendoza's criminal history calculation  
7 based on a grant of probation in 2001 on a relatively minor misdemeanor case seems an unjust result.  
8

9 The Presentence Report also correctly adds one point to Mr. Salcedo-Mendoza's criminal history  
10 computation for his most recent conviction, the same drug-related felony in Alameda County. Again,  
11 however, although technically an appropriate calculation, the timing of the offense skews the  
12 defendant's criminal history. According to the Presentence Report, the offense was committed on April  
13 21, 2002. Again, since, by definition, this offense was committed after defendant committed the instant  
14 offense of re-entering the country, the resulting one-point calculation seems unfair. If, for example, the  
15 government had been lucky enough to have arrested defendant immediately upon his re-entry into the  
16 United States, his criminal history category would have reduced by one point.  
17

18 Thus, Mr. Salcedo-Mendoza's criminal history calculation is overstated by the peculiarities of  
19 his prior arrest record and the timing of his arrest in the instant case. Were it not for the two-point  
20 addition applied because Mr. Salcedo-Mendoza was on probation for a misdemeanor and the fact that  
21 he was arrested for the instant offense after, and not before, being prosecuted in state court, rather than  
22 his current category IV status, five criminal history points would have resulted in a Category III  
23 disposition.  
24  
25  
26  
27  
28

# Exhibit C

1 KEVIN V. RYAN (CSBN 118321)  
United States Attorney  
2  
3 CHARLES B. BURCH (CSBN 79002)  
Chief, Criminal Division  
4 STEPHEN G. CORRIGAN (MASBN 100560)  
Assistant United States Attorney  
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Oakland, CA 94612  
Telephone: (510) 637-3701  
7 Fax: (510) 637-3724  
8 Attorneys for Plaintiff

FILED  
2003 MAY -9 PM 2:15  
RICHARD W. WICKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 OAKLAND DIVISION

13 UNITED STATES OF AMERICA,  
14 Plaintiff,  
15 v.  
16 JAIME SALCEDO-MENDOZA,  
17 Defendant.  
18

No. CR-02-40135-SBA

UNITED STATES' OPPOSITION TO  
DEFENDANT'S MOTION FOR  
DOWNWARD DEPARTURE

Date: May 14, 2003  
Time: 9:00 a.m.

19  
20 Defendant Jaime Salcedo-Mendoza moves for a downward departure from his  
21 applicable guideline range of 24 to 30 months imprisonment, claiming entitlement due to  
22 an overstatement of his criminal history, his agreement to be deported, and mitigating  
23 circumstances related to the violation. The government opposes the motion.

24 BACKGROUND

25 Pursuant to terms encompassed in a written plea agreement, the defendant has pled  
26 guilty to the illegal reentry following deportation, a violation of 8 U.S.C. § 1326. The  
27 plea agreement includes the following language: "I agree that the Sentencing Guidelines  
28 should be calculated as follows, and that I will not ask for any other adjustments to or

OPPO RE DOWNWARD DEPARTURE  
CR-02-40135-SBA

1

Document No.  
354  
D. W. Wick  
Clerk, U.S. District Court

1 reductions of the offense level [13]." Plea Agreement at ¶ 7.

2 The Presentence Report (PSR) concurs with the parties' agreement that the  
3 applicable guideline range is 13. Plea Agreement at 7.f.; PSR at ¶13. The defendant has  
4 accrued eight criminal history points (PSR at ¶28), which places him in Category IV (7,8,  
5 or 9 points). U.S.S.G. Chapter 5, Part A. The eight criminal history points include six  
6 points for several convictions and two additional points under U.S.S.G. § 4A1.1(d) for  
7 having been on probation at the time he committed the instant offense. PSR at ¶28.

8 As reported in the PSR, the defendant was born in Mexico. PSR at ¶33. Following  
9 his third felony drug conviction, he was deported from the United States on February 12,  
10 1999. PSR at ¶¶5, 23-25.

11 Since his return to the United States, the defendant has suffered two misdemeanor  
12 convictions, one for battery on a peace officer and one for resisting the arrest of a peace  
13 officer, for which he was sentenced to three years probation and thirty days of jail. PSR  
14 at ¶26. The defendant has also, since his return, suffered a felony accessory conviction  
15 for which he was sentenced to five years probation and twenty-four days in jail. PSR at  
16 ¶27.

17 The defendant has been detained in federal custody on the instant offense since  
18 April 22, 2002. PSR at page 1.

#### 19 DISCUSSION

#### 20 The Defendant Has Failed To Show A Downward Departure Is Authorized or Warranted

##### 21 A. The Plea Agreement Precludes such a Motion

22 By virtue of the limiting language in the plea agreement, "that I will not ask for  
23 any other adjustments to or reduction of the offense level," the defendant is precluded  
24 from seeking a sentence below the adjusted offense level, just as the government is  
25 precluded from seeking a sentence above the adjusted offense level. Hence, the  
26 Defendant's motion for a downward departure should be denied without consideration of  
27 the merits.